



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Councilmember Kansen Chu  
Councilmember Ash Kalra  
Councilmember Xavier Campos

**SUBJECT:** RECOMMENDATION TO  
SUPPORT REGULATION OF  
MENTHOL AND FLAVORED  
TOBACCO PRODUCTS

**DATE:** February 14, 2013

**APPROVED:**

**DATE:**

2/14/13

## **RECOMMENDATION:**

Adopt a resolution to support the Food and Drug Administration's regulation of menthol and flavored tobacco products.

## **BACKGROUND:**

In June 2009, Congress passed HR 1256 banning flavored cigarettes but exempted menthols from the ban. The U.S. Food and Drug Administration (FDA) was ordered to study the effects of menthol cigarettes and make recommendations for regulation.

Flavored tobacco advertisements are particularly targeted towards teens and ethnic youth. In San José, more than half a million people account for communities of color and approximately 35% of our population is made up of those under the age of 25. Tobacco industries purposely market their attractive tobacco products to young adults by adding candy or fruit flavors and designing trendy packaging. A 2010 study prepared by the Center for Tobacco Products found that smokers who start with menthol products are more likely to be susceptible of nicotine and tobacco use.

As the largest city in Santa Clara County, better regulation and serious consideration to banning menthol, candy and fruit flavored tobacco products is needed to prevent chronic illnesses such as heart disease, cancer, diabetes etc. State leaders across California, including Senator Jim Beall, Assembly Speaker pro Tempore Nora Campos, Assemblymember Richard Gordon, and Assemblymember Paul Fong, have taken a stance in support of a ban on menthol-flavored products.

FDA needs to receive resolutions before June of this year, therefore it is recommended that the City of San José take action. By adopting a resolution in support of FDA regulation of menthol in cigarettes and flavoring in other tobacco products, the City of José is promoting health and improved quality of life for all residents.

## **RESOLUTION OF SUPPORT OF FOOD AND DRUG ADMINISTRATION (FDA) REGULATION OF MENTHOL IN CIGARETTES AND FLAVORING IN OTHER TOBACCO PRODUCTS**

**WHEREAS, 44% of children aged 12-17 years who smoke,<sup>i</sup> and 51% of Asian American and Latino, 79% of African American, and 37% of white high school-aged smokers use menthol cigarettes;<sup>ii</sup>**

**WHEREAS, tobacco industry documents clearly show how the tobacco industry designed flavored tobacco products to target youth;<sup>iii</sup>**

**WHEREAS, mentholated and flavored products have been shown to be "starter" products for youth who begin smoking;<sup>iv, v, vi</sup>**

**WHEREAS, the tobacco industry has been manipulating the dose of menthol in cigarettes to ensure the uptake and continued use of tobacco, especially by young people and other vulnerable populations for many years;<sup>vii</sup>**

**WHEREAS, 71% of Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) smokers, particularly youth, smoke menthol cigarettes;<sup>viii</sup>**

**WHEREAS, the tobacco industry has targeted African Americans with mentholated products and as a result nearly 83% of African American smokers smoke menthol cigarettes, compared with 24% of white smokers;<sup>ix</sup>**

**WHEREAS, the U.S. Food and Drug Administration (FDA) has the authority to issue product standards to promote public health, which can include eliminating or reducing certain ingredients;<sup>x</sup>**

**WHEREAS, the FDA already prohibits cigarettes from having candy, fruit, and spice as characterizing flavors because these flavors make tobacco products especially appealing to kids, and can lead to a lifetime of tobacco addiction;<sup>xi</sup>**

**WHEREAS, menthol was expressly exempted from the ban on characterizing flavors in cigarettes;<sup>xii</sup>**

**WHEREAS, other tobacco products (including but not limited to smokeless tobacco, cigars, hookah tobacco, and dissolvable tobacco products) are not included in the ban on candy, fruit, spice or other characterizing flavors;<sup>xiii</sup>**

**WHEREAS, the tobacco industry has a well-documented history of developing and marketing mentholated brands to racial and ethnic minorities and youth;<sup>xiv, xv</sup>**

**WHEREAS, in cigarettes, menthol is the only cigarette additive that is actively marketed to consumers, and virtually all cigarettes contain at least some menthol to make cigarettes more palatable;<sup>xvi</sup>**

WHEREAS, the City of San Jose of Santa Clara County is committed to the health and well being of its residents and is particularly concerned about preventing tobacco use among youth;

NOW, THEREFORE, BE IT RESOLVED, that the City of San Jose hereby supports the Food and Drug Administration's exercise of its authority to ban the use of menthol in cigarettes and other tobacco products in the United States;

BE IT FURTHER RESOLVED that the City of San Jose shall send this resolution to the FDA Staff and Advisory Committee:

---

Name of Signatory

---

Date

<sup>i</sup> Jennifer M. Kreslake et al., *Tobacco Industry Control of Menthol in Cigarettes and Targeting of Adolescents and Young Adults*, 98 AM. J. PUB. HEALTH 1685, 1685-92 (2008).

<sup>ii</sup> My-Charllins Vilsaint, et al., *Cigarette Smoking among Youth. Results from the 2002 National Youth Tobacco Survey*, Center for Tobacco Control Research and Education, UC San Francisco, June 1, 2004, available at <http://escholarship.org/uc/item/41n8d2x8>.

<sup>iii</sup> Department of Health and Human Services, Food and Drug Administration, *FDA Parental Advisory on Flavored Tobacco Products – What You Need to Know*, available at: [www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/ucm183196.htm](http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/ucm183196.htm).

<sup>iv</sup> Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *The NSDUH Report: Use of Menthol Cigarettes*, Nov. 19, 2009, available at: <http://oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.

<sup>v</sup> James C. Hershey et al., *Are Menthol Cigarettes a Starter Product for Youth?*, 8 NICOTINE & TOBACCO RES. 403, 403-13 (2006).

<sup>vi</sup> Olivia Wackowski & Cristine D. Delnevo, *Menthol Cigarettes and Indicators of Tobacco Dependence Among Adolescents*, 32 ADDICTIVE BEHAV. 1964, 1964-69 (2007).

<sup>vii</sup> Jennifer M. Kreslake et al. *Tobacco Industry Control of Menthol in Cigarettes and Targeting of Adolescents and Young Adults*. 98 AM. J. PUB. HEALTH 168S, 168S-1692 (2008).

<sup>viii</sup> National Youth Advocacy Coalition, *Coming Out About Smoking*, NYAC Wiki, available at: [http://wiki.nyacyouth.org/Index.php?title=Coming\\_Out\\_About\\_Smoking&oldid=1674](http://wiki.nyacyouth.org/Index.php?title=Coming_Out_About_Smoking&oldid=1674).

<sup>ix</sup> Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *The NSDUH Report: Use of Menthol Cigarettes*, Nov. 19, 2009, available at: <http://oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.

<sup>x</sup> Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, § 102, 123 Stat. 1776 (codified as amended in scattered sections of 5 U.S.C., 15 U.S.C., and 21 U.S.C.); 21 U.S.C. § 387a-1 (2010).

<sup>xi</sup> 21 U.S.C. § 387g(a)(1)(A) (2010).

<sup>xii</sup> *Id.*

<sup>xiii</sup> *Id.*

<sup>xiv</sup> *United States v. Philip Morris*, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009).

<sup>xv</sup> Valerie B. Yerger et al., *Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities*, 18 J. OF HEALTH CARE FOR THE POOR & UNDERSERVED 10, 10-38 (2007).

<sup>xvi</sup> Summary of the Second Conference on Menthol Cigarettes: *Menthol in Cigarettes: It helps the poison go down easier* A Report to the Food and Drug Administration (FDA) Prepared as Public Comment by Phillip Gardiner, Dr. P.H., University of California Office of the President, Tobacco Related Disease Research Program Pamela Clark, Ph.D., University of Maryland College Park, School of Public Health. December 21<sup>st</sup>, 2009.